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IN THE

Supreme Court of the United States

October Term, 1971

No. 71-713

VIRGINIA IMPRESSION PRODUCTS CO., INC.,

Petitioner,

against

SCM CORPORATION,

Respondent.

RESPONDENT SCM'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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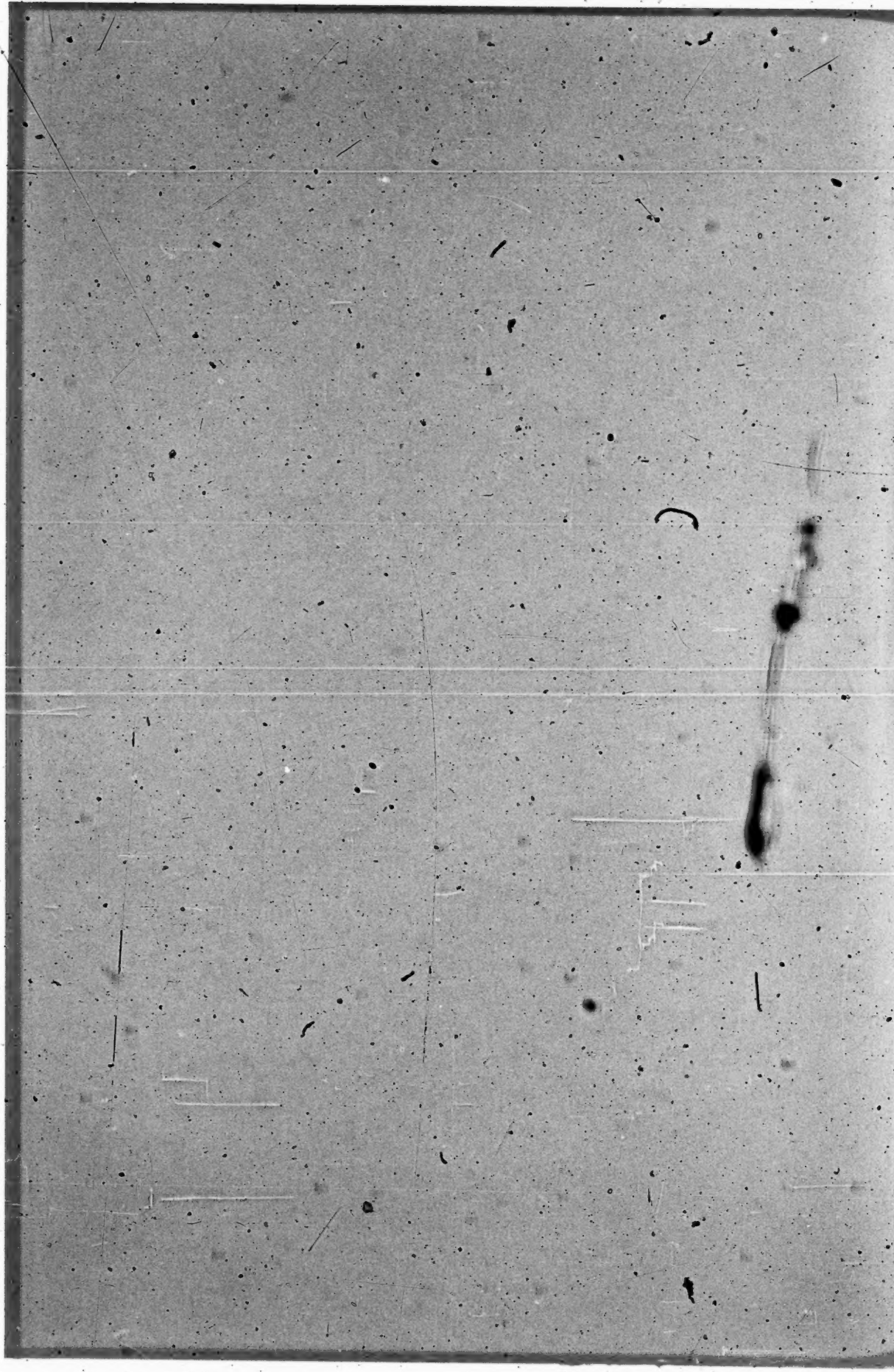
January 12, 1972



INDEX

	PAGE
Questions Presented	3
Statement of the Case	3
The Issues Decided by the Court Below	3
The Pertinent Facts Concerning VIP's Claim That Cancellation of the Dealership Agreement Violated the Antitrust Laws and the Decision Below that VIP's Release Barred that Claim	5
The Pertinent Facts Concerning VIP's Conceded Failure of Proof and Its Express Abandonment Of Its Post-Release Claim	13
Argument	15
Conclusion	18

TABLE OF AUTHORITIES

Advance Business Systems & Supply Co. v. SCM Corporation, 415 F.2d 55 (4th Cir. 1969), cert. denied, 397 U.S. 920	5
Albrecht v. Herald Co., 1971 Trade Cases ¶ 73,754 (8th Cir. 1971)	8
Chevron Oil Company v. Huson, —— U.S. ——, 40 U.S.L.W. 4023	6
DeHart v. Richfield Oil Corp., 395 F.2d 345 (9th Cir. 1968)	12, 17
Emich Motors Corp. v. General Motors Corp., 181 F.2d 70 (7th Cir. 1950), cert. granted and modified on a different issue, 340 U.S. 558	9

PAGE

Erie R. Co. v. Tompkins, 304 U.S. 64 15

Northern Assurance Co. of London v. Grand View Building Association, 183 U.S. 308 .....15, 16

Novak v. General Electric Corp., 282 F.Supp. 1010 (E.D. Pa. 1967) 17

Sandura Co. v. Federal Trade Commission, 339 F.2d 847 (6th Cir. 1964) 6

Simpson v. United States, 172 U.S. 372 15

Snap-On Tools Corporation v. Federal Trade Commission, 321 F.2d 825 (7th Cir. 1963) 6

Suckow Borax Mines Consol., Inc. v. Borax Consolidated, Ltd., 185 F.2d 196 (9th Cir. 1950), cert. denied, 340 U.S. 943 17

United States v. Arnold, Schwinn & Co., 388 U.S. 365 6

United States v. Yazell, 382 U.S. 341 17

White Motor Co. v. United States, 372 U.S. 253 6

Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321 .....13, 16, 17

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Further review of the decision of the court below rejecting petitioner's Settlement Agreement and release contentions is not warranted. The court below carefully reviewed the record, identified the relevant undisputed facts and applied to those facts uniformly accepted legal principles as to which there is no conflict or confusion. It reached the just and proper result on the facts presented, including the parties' contemporaneous written agreement and expression of intent. The decision below has no impact beyond the specific negotiated transaction between the two parties involved.

The issue of whether federal law governs in resolving this specific case has no significance because no showing has been or can be made that the result would be any different from that reached by the court below. In-

deed, the court below did not hold that state law was applicable but instead relied on all sources, including relevant forum state and federal decisions; and it considered federal antitrust policy. The parties in the court below extensively briefed the facts and law, and petitioner's written and oral arguments relied heavily on forum state law. Petitioner raised for the first time its contentions concerning federal law in its petition for rehearing. The court below denied that petition, properly rejecting such contentions without further discussion.

Review of the dismissal of the petitioner's post-release claim for damages of about $5,000 is not warranted. The petition's assertion that the court below dismissed that claim by *sub silentio* giving effect to the release as to post-release matters is an affront to this Court and the court below. The petition accurately states that respondent expressly conceded throughout the case that the release had no effect on any post-release matters; but the petition does not inform this Court of the salient facts upon which respondent did urge dismissal of such post-release claim: that prior to the submission of the case to the jury, petitioner expressly conceded that it failed to prove clearly its post-release damage claim; and that petitioner then proceeded expressly to abandon that claim. We set forth those facts from the record at pages 13-15 below.

Thus, it is no wonder that petitioner's abandoned claim was disposed of by the court below without discussion in its opinions or denial of rehearing. Indeed, not a single judge requested that the court be polled when, in its petition for rehearing and suggestion for hearing *en banc*, the petitioner for the first time made the argument it now advances. In short, there is no issue here whether a release was given effect with respect to any post-release matters.

Questions Presented

Whether the court below erred in deciding that in the facts and circumstances involved a written Settlement Agreement containing mutual releases, one of which was a release by a dealer to a manufacturer of all claims of every kind or character known and unknown arising from the cancellation of the dealership agreement, barred the dealer's claim that such cancellation violated the antitrust laws.

Whether the court below erred in dismissing the complaint insofar as it related to the dealer's claim of post-Settlement Agreement antitrust violation where, among other things, the dealer admitted unclear proof of damages and expressly abandoned that claim before the case was submitted to the jury.

Statement of the Case

The Issues Decided by the Court Below

In its opinion (P. App. 1-8*), the majority of the court below held that the release given by petitioner (VIP) to respondent (SCM), contained in paragraph 2 of the Settlement Agreement, from all claims of "every kind or character, known and unknown, arising from [the dealership agreement] or its cancellation" (P. App. 3, fn. 2), barred VIP's claim against SCM that such cancellation violated the antitrust laws.

It reached that decision by carefully considering the record, identifying the material extrinsic facts leading up to the execution of the Settlement Agreement and concluding that there was no evidence of fraud, misrepresentation,

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* References are preceded by the following identifications: petitioner's Appendix (P. App.); the petition (Pet.); the Joint Appendix filed in the court below (JA); and exhibits marked by plaintiff VIP and defendant SCM (PX and DX).

concealment or mutual mistake; and by concluding that the Settlement Agreement including its mutual releases was clear and unambiguous on its face as a contemporaneous written expression of the agreement and the intent of the parties to discharge any and all claims of any kind or character, known and unknown, arising from the cancellation of the dealership agreement.* As the majority held, cancellation was the very act "which is now the basis for claimed antitrust law violations" (P. App. 5).

As shown by the first footnote in his opinion, the dissenting judge differed most narrowly: his conclusion that a jury issue was presented "would readily be to the contrary" if the operative release language contained in the body of the Settlement Agreement had also been contained in its preamble (P. App. 8). The majority considered that such repetition was unnecessary since it was plain, viewing the Settlement Agreement as a whole, that the parties did not intend to limit their agreement to specific differences, but rather "to settle all matters forever" relating to the dealership agreement and its cancellation (P. App. 4-5).

Thus, in the light of the court's disposition and as shown in the fifth footnote of the dissenting opinion (P. App. 15), it was unnecessary to reach the question of whether the jury was properly charged on the Settlement Agreement issues. The trial court itself observed during the course of its charge that it had "confused" the jury with some of its Settlement Agreement instructions (JA 83a). It also observed, shortly before the end of its charge on all issues, that it was sure the jury was "completely con-

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*Even if it had been held that VIP's release of SCM was ambiguous and required jury consideration, the case would have been remanded for a new trial on the court's holding that there was no evidence of fraud, misrepresentation, concealment or mutual mistake since the jury was instructed on those points. Contrary to petitioner's assertion (Pet. 7), those were issues raised by VIP from the outset of the case (JA 132a), which it continues to press here (Pet. 2-3, 10, 15, 16).

fused" (JA 111a). Nor was it necessary for the court below to reach the other issues raised on the appeal, some of which are described in the text and footnotes at pages 6, 8 and 9 below. As already noted, the court below did not discuss its disposition of VIP's abandoned post-release claim.

The Pertinent Facts Concerning VIP's Claim That Cancellation of the Dealership Agreement Violated the Antitrust Laws and the Decision Below that VIP's Release Barred that Claim

In the first place, to divert attention from the facts relating to the Settlement Agreement, VIP treats and intermingles without distinction the facts which relate to its pre-release claim that SCM's cancellation of its dealership violated the antitrust laws, and those which relate to its post-release claim that SCM engaged in alleged anti-competitive practices after the cancellation. In that regard, much of which is cited by VIP in its petition, including the decision of the same Court of Appeals in the *Advance* case,* (which did not involve a former SCM dealer or any issues relating to any of SCM's dealer policies), related only to VIP's abandoned post-release claim.

In the second place, we consider that VIP has misstated the facts relating to both its pre-release and post-release claims and to the Settlement Agreement. In view of the abandonment of the post-release claim, it is unnecessary for us to deal with the facts relating to that claim. However, so there be no misapprehension we note that SCM offered substantial evidence to support its vigorous denial that it engaged in any anti-competitive practices after cancellation of VIP's dealership. It is necessary to show accurately the facts and issues relating to VIP's pre-release claim of illegal cancellation of VIP's dealership, and the facts and issues relating to the Settlement Agreement, to which we now turn.

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* *Advance Business Systems and Supply Co.* v. *SCM Corporation*, 415 F.2d 55 (4th Cir. 1969), *cert. denied*, 397 U.S. 920.

During the period from 1962 to 1966, SCM and some 40 other manufacturers attempted to make and maintain entry in the photocopy business and to compete with Xerox, which was completely vertically integrated, which already dominated that business and whose market share dramatically increased from 25% in 1962 to 48% in 1964 and to 61% in 1966. (DX 62, DX 1796, JA 1104-11a.)

In the entire industry context, during that period SCM granted territorial exclusivity to its dealers such as VIP in the areas of their respective local operations. As shown by SCM's proffered but excluded evidence, the SCM dealer policies (the violation of which VIP claimed led to the dealership cancellation) were maintained in reliance upon the decisions of this Court and various courts of appeals, holding that policies of those types were lawful if reasonable on the particular facts in the industry involved.* (JA 1104-11a, 1167a, 1433-35a.)

In September, 1962 VIP became an SCM photocopy products dealer. The dealership agreement contained a

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* SCM appealed from the trial court's determination that the jury would not be permitted to consider the reasonableness of SCM's vertical dealer policies and from various holdings by the trial court which led to that conclusion. (JA 92-93a, 542a(1)-(2).) Such holdings included a determination that the 1967 decision in *United States* v. *Arnold, Schwinn & Co.*, 388 U.S. 365 is not subject to an exception with respect to new entrants; and that *Schwinn* was to be retroactively applied to SCM's cancellation of VIP's dealership in 1964 without consideration of SCM's proffered evidence of its reliance on *White Motor Co.* v. *United States*, 372 U.S. 253, *Snap-On Tools Corporation* v. *Federal Trade Commission*, 321 F.2d 825 (7th Cir. 1963), *Sandura Co.* v. *Federal Trade Commission*, 339 F.2d 847 (6th Cir. 1964) and earlier decisions. As to non-retroactivity, SCM relied on the principles and authorities most recently summarized and applied by this Court in *Chevron Oil Company* v. *Huson*, —— U.S. ——, 40 U.S.L.W. 4023, 4026-27.

provision for cancellation by either party on ten days' notice, which SCM invoked 18 months later, in April, 1964. In the dealership agreement, SCM conferred on VIP exclusive rights to market SCM photocopy products in the Richmond, Virginia area, the local area of its office supply products business. (DX 953, DX 1101.)

VIP itself claimed that it was the largest independent photocopy dealer in that area. During and indeed after the period in which it was a dealer for SCM, VIP also enjoyed exclusive rights to market office supply products, including competitive photocopy products, for at least 13 other manufacturers. (DX 1152, DX 1634, JA 580a, 645-46a.)

VIP was owned and managed by a sophisticated businessman, its president, Donald Redman, who often consulted with its regularly retained attorney. (JA 643a-44a, 714-17a.) Redman was well aware of litigation and complaints to governmental authorities as tools for VIP.*

During its dealership, VIP's indebtedness to SCM often exceeded the credit line which SCM had extended to it when VIP secured the dealership; and there were continued disputes between them concerning the amount of VIP's indebtedness. On cancellation, VIP's indebtedness concededly was substantially in excess of its credit line. It was only learned in the discovery in this action that Redman had secured VIP's dealership in 1962 by supplying SCM with financial information which falsely overstated VIP's net

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* For example, in May 1964, a month after cancellation of its SCM dealership, and a few months before September 1964 when he executed the Settlement Agreement, Redman wrote to VIP's attorney suggesting the possibility that VIP threaten suit or lodge a complaint with the Department of Justice concerning an alleged misrepresentation by another photocopy manufacturer (DX 1120). One event leading to the VIP-SCM Settlement Agreement was VIP's threat in July 1964 to sue SCM (DX 1134; see text page 10, *infra*).

worth by ten times, and which substantially overstated its profits during the preceding two years. (DX 9, DX 127, DX 1793-1795, JA 350-51a, 702a, 710a.)

VIP made no attempt to show that it ever earned any profits on the SCM line*, and there was affirmative evidence of its disinterest in continuing as an SCM dealer. Before the dealership was cancelled, Redman expressed his dissatisfaction about doing business with SCM (DX 984, DX 988). Six weeks before that cancellation, Redman said that the SCM dealership was a "temporary expediency" for VIP; and that it "will be necessary in the next few week or months" for VIP to make a "break" with SCM (DX 1056). After cancellation, VIP made no inquiries concerning it and made no effort to regain the dealership (JA 626-28a).

VIP contended in the trial court and on appeal that SCM's reason or motivation for cancelling the dealership was VIP's violation of SCM's dealer territorial and alleged user limitations. SCM contended that the reasons or motivation for the cancellation were two-fold: because the credit difficulties with VIP had reached a head; and because VIP had been covertly transshipping SCM photocopy machines to S.O.S. and S.O.S. dealers. (JA 468-75a, 524a, 1467-69a.)

S.O.S. was an organization headquartered in California and led by ex-SCM photocopy executives, with whom SCM

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* In addition to SCM's claim in the trial court and on appeal that the jury was improperly permitted to consider VIP's wholly artificial claim for alleged lost profits, SCM also contended that VIP's damage theory involved duplicative elements: the jury was permitted to award both the alleged lost "going concern" or "good will" value of the dealership as of the date of its cancellation and the profits VIP claimed it would have earned in succeeding years (JA 104a). SCM relied on decisions in three different Courts of Appeals squarely holding those elements to be duplicative. The same decision was reached most recently in *Albrecht* v. *Herald Co.*, 1971 Trade Cases ¶ 73,754 (8th Cir. 1971).

was then engaged in bitter litigation. Prior to the cancellation of VIP's dealership, SCM had commenced in Illinois the first of a series of unfair competition actions against S.O.S. and various S.O.S. dealers, which ultimately in 1966 resulted in the entry of consent decrees enjoining various of the alleged unfair practices and dismissing with prejudice the antitrust claims S.O.S. had advanced. (DX 1281, DX 1642-1644, JA 1125-26a, all excluded.) In this action commenced by VIP in 1968, nearly four years after the Settlement Agreement, VIP's attorneys were the same attorneys which had represented S.O.S.

SCM sought but was not permitted by the trial court to show that, acting unilaterally, it was unwilling to sell its photocopy products to S.O.S., directly or indirectly, during a period in which SCM was willing to and did do business with other competitors; and that SCM cancelled VIP's dealership because of such unwillingness to do business with S.O.S. indirectly by selling to VIP.* (DX 1763, JA 524a, 1511a-17a.)

VIP had been covertly transshipping SCM products to S.O.S. and some of its dealers for about three months prior to the cancellation of its SCM dealership on April 8, 1964 (DX 1114-1116, JA 671-74a, 1064-65a). Among SCM's claims of unfair competition were its claims that certain S.O.S. dealers misrepresented that they were authorized SCM dealers in marketing and servicing SCM photocopy products, when in fact they were not and had acquired SCM

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* On the facts, and on the authority of *Emich Motors Corp.* v. *General Motors Corp.*, 181 F.2d 70 (7th Cir. 1950), cert. granted and modified on a different issue, 340 U.S. 558, and the decisions of other Courts of Appeal relating to the introduction of evidence to support contentions concerning motivation for dealer cancellations, SCM appealed from the trial court's rulings excluding SCM's proffered evidence and holding that the jury would not be permitted to consider SCM's contention.

photocopy machines by indirect means, and also palmed off S.O.S. photocopy paper as SCM paper.*

A few days after the cancellation (and some five months before the Settlement Agreement and release was executed by VIP), VIP formalized its relationship with S.O.S. and became its exclusive dealer in the Richmond area (DX 1073, DX 1634).

Three months later, in July 1964, while preliminary negotiations with SCM were going on, Redman threatened legal action against SCM if the parties' differences were not resolved quickly, without identifying the type of claim VIP might assert (DX 1134).

In August 1964, SCM engaged George C. Freeman, Jr., a member of the Richmond law firm of Hunton, Williams, Gay, Powell & Gibson, to consider and advise concerning the potential claims of SCM and VIP against each other, and on SCM's behalf to negotiate a written settlement agreement with VIP (DX 1674). SCM informed Freeman of the history of the previous negotiations and of the cancellation of VIP's dealership because of its dealings with S.O.S. and the credit difficulties. SCM also told Freeman of the then-pending litigation against S.O.S. and the S.O.S. antitrust claims. (JA 1254-55a.)

After reviewing the facts, Freeman advised SCM of the possibility that it possessed an unfair competition claim against VIP and that there was some risk of an antitrust action by VIP against SCM (JA 1281-82a). In this factual context SCM informed Freeman that it wanted the VIP matter "completely resolved", with mutual general releases by VIP and SCM in order to avoid litigation of any kind arising from the dealership agreement or its cancellation (JA 1255a, 1283-84a).

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* Bribery, kickbacks and misappropriation of confidential customer lists were other practices by S.O.S. and certain of its dealers which SCM alleged against them based on its knowledge and belief (DX 1642-1644 excluded).

Freeman then spoke with Redman, expressing the terms on which SCM was willing to settle—the financial arrangements and an exchange of general releases. Redman told Freeman that VIP had an attorney but refused to disclose his name. Freeman and Redman agreed that Freeman would draft a written agreement embodying those terms, which, as Freeman urged, would be submitted by Redman to VIP's attorney. Both orally and in writing (see Freeman's letter, DX 486, quoted in fn. 4 of the opinion of the court below), Freeman stated that if VIP's attorney had any questions he should discuss them with Freeman. (JA 1283-89a.)

Freeman's conduct in his communications with Redman met the highest standards of professional practice. Nevertheless, VIP continues to attack Freeman's conduct without a shred of justification. Instead of attempting to give Redman gratuitous legal advice which might be incomplete, misleading or erroneous, or which might deter Redman from discussing the matter fully with his own attorney, Freeman gave Redman the only advice he could give: that Redman see and consult his own attorney.

Some ten days after Freeman sent Redman the draft settlement agreement, Redman advised Freeman that it was in good order, and Redman executed it (JA 1286a). Redman testified in this action that he chose to enter into the agreement without consulting VIP's attorney, a fact which was not revealed to Freeman (JA 714a). If, as Redman testified, he decided not to consult VIP's attorney, that choice is consistent with a recognition by him at that time that the mutual releases in the Settlement Agreement accurately expressed his and VIP's intention to settle forever all known and unknown claims of any kind which VIP or SCM may have possessed against the other arising from the dealership agreement or its cancellation.

In support of its position in this action, VIP advanced Redman's objected-to oral testimony at trial that in his

mind five years earlier when he executed the Settlement Agreement he understood the release to reach only the prior financial differences between the parties, although he never conveyed that claimed understanding to SCM or anyone else. (JA 613a.)

The court below held that Freeman did not mislead Redman but properly encouraged him to consult VIP's lawyer and that Redman's failure to do so was "a dereliction not chargeable to SCM" (P. App. 6). The court held that there was no evidence of any fraud, misrepresentation or concealment; that there was no mutual mistake of fact and Redman knew as well as SCM all of the material facts; and that VIP's claimed failure to appreciate the significance of the known facts, whether because of Redman's dereliction or because of any claimed lack of expertise in the antitrust laws, was insufficient to avoid the release (P. App. 6-7). The court also held, relying upon *DeHart v. Richfield Oil Corp.*, 395 F.2d 345 (9th Cir. 1968), that the alleged unilateral intent of Redman, undisclosed to SCM, could not avoid the release (P. App. 5).*

There were two other holdings by the court below. The first was that reading as a whole the Settlement Agreement, including the release in paragraph 2, it was a clear and unambiguous expression of the agreement and intent of the parties to settle forever any and all kinds of known and unknown claims arising from the dealership agreement or its cancellation; and that it was not, as VIP claimed, an expression of agreement and intent to limit the mutual releases to the parties' financial differences (P.

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* In the *DeHart* case, plaintiffs gave a general release to defendant in settlement of an antitrust action and thereafter sued on an alleged pre-release breach of contract claim. Without holding whether federal or state law governs, and drawing on relevant forum state (Washington) and federal decisions, the court affirmed summary judgment for defendant and held that there was no reason to allow oral testimony by plaintiffs-releasors of their claimed unilateral intent not to compromise the contract claim.

App. 4-5). The construction urged by VIP would not have explained an ambiguity, of which there was none, but would have contradicted and rewritten the express release of claims arising from the dealership agreement "or its cancellation" to a release of financial differences concerning VIP's account with SCM.

The second holding was that federal antitrust policy as most recently expressed by this Court in *Zenith* and as conceded by VIP in oral argument below, does not prevent effectuating, as between the parties, the terms of a plain release expressing the parties' agreement and intent, specifically negotiated at arms' length by two business enterprises, where there is no evidence of fraud, misrepresentation, concealment or mutual mistake (P. App. 7).

In order to weave the fabric of a purported policy argument that this case presents a generalized situation requiring a rule to "protect an unsophisticated victim of antitrust violations" (Pet. 16), VIP in its petition makes no reference whatsoever to the facts relating to Freeman's urging Redman to consult VIP's attorney, and Redman's decision not to do so. Instead, VIP utters the most astounding half-truth contained in the petition when it asserts that the application of rules giving binding effect to written agreements "lays traps for unwary plaintiffs, not represented by counsel, as was the case with petitioner prior to and when executing the release" (Pet. 15, fn. 34).

The Pertinent Facts Concerning VIP's Conceded Failure of Proof and Its Express Abandonment Of Its Post-Release Claim

VIP's counsel began his reply closing argument to the jury by conceding VIP's failure of proof as to its post-release claim that SCM engaged in anti-competitive practices, VIP's so-called "second case":

> "Let me start out by making a major concession in light of what Mr. Farley [SCM's trial counsel] has

> said. We really haven't been very clear in proving the damages in terms of the lost paper sales that Mr. Redman lost or suffered as a result of the so-called second case, or the attempts to compete with SCM after he was terminated because of what we have called anticompetitive practices:" (JA 1473a)

Indeed, even that was an understatement, since it was made in the light of Redman's admission on cross-examination that VIP had not suffered any lost business by reason of SCM's alleged post-release anticompetitive practices (JA 701a).

After making that major concession, VIP's counsel stated to the jury:

> "I suggest, ladies and gentlemen of the jury, that you do what I am going to do, and that is to focus on the real case here. That is the damages suffered by [VIP] by virtue of their illegal termination." (JA 1474a)

VIP's counsel then expressly and conclusively abandoned VIP's post-release claim near the end of this argument to the jury, when he stated:

> "As far as we are concerned you can forget that other, you know, the other tough problem about the anticompetitive things, the $5,000. That is peanuts." (JA 1482a)

On these facts, and SCM's position throughout the case that the release had no effect with respect to VIP's post-release claim, there was no holding by the court below, as VIP states, that the release was invoked *sub silentio* to discharge SCM from any post-release liability. Any discussion by the court below of VIP's contention advanced in its petition for rehearing and suggestion for hearing *en banc,* would have unnecessarily dignified it. The

renewal of that contention here with omission of the pertinent facts can be most charitably characterized as an abuse of the statutory privilege to seek certiorari review.

Argument

Since there is no issue as described by VIP arising from the disposition of VIP's post-release claim, our discussion here relates to the absence of any factor warranting further consideration by this Court of the decision below that VIP's pre-release claim concerning cancellation of the dealership was barred by the Settlement Agreement and release.

1. The court below applied familiar and well-established principles that the intent of the parties governs and that the unambiguous contemporaneous written expression of that intent shall be given effect. Apart from the plethora of state decisions decided on that basis, this and other federal courts have invoked and applied the same principles, particularly in the pre-*Erie* v. *Tompkins* period.

Thus, in *Simpson* v. *United States*, 172 U. S. 372, 379, this Court held that it "is too elementary to require anything but statement" that a party "cannot be heard to vary by parol its express and unambiguous stipulations" to impair the obligations which a contract engenders or to produce for that party a better monetary result. Similarly, in *Northern Assurance Co. of London* v. *Grand View Building Association*, 183 U.S. 308, 364, it was said:

> "It is the knowledge of the inconveniences that attend oral evidence that has led to the custom of putting important agreements in writing and to the legal doctrine that protects them when so expressed, and when no fraud or mutual mistake exists, from being changed or modified by the testimony of witnesses as

to conversations and negotiations that may have never taken place, or the real nature and meaning of which have faded from recollection."

See also *Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 401 U.S. 321, 347, fn. 12 and the cases cited therein with approval. In the *Zenith* case, the Court in an antitrust action invoked the rule of effectuating the parties' intentions insofar as they related to the discharge of non-contracting third party joint tortfeasors.

There is simply no conflict or confusion concerning that rule of intention, or concerning the principles relating to the ascertainment of the parties' intentions by reference to the contemporaneous unambiguous written expression of the parties' agreement and intent.

2. As conceded by VIP (Pet. 13, fn. 32) many of the 24 cases it cites in its Appendix C concerning alleged confusion as to whether federal or state law should govern involved the divergence of views concerning the impact of releases on joint tortfeasors who were not parties to the release, the issue which this Court resolved in *Zenith*.

VIP also conceded the absence of any conflicting Courts of Appeals' decisions on the "precise question" of federal or state law which VIP says is raised by the decision of the court below (Pet. 13). There is no recurrent significance to this purported question. Only eight of the 24 cases cited by VIP in its Appendix C, all of which were antitrust cases, involved the question of the scope of a release as between the parties to that release. Whether federal or state law governs lacked any determinative significance because of the application in those cases of the same uniformly accepted principles applied here.

3. VIP cites a provision of the Settlement Agreement that Virginia law would govern, to support its mischarac-

terization that the court below held that Virginia law applied (Pet. 7, fn. 24a). The court below made no holding that either forum state or federal law should govern, just as no holding on that point was made in the *DeHart* case (see page 12, above) and many other cases including several cited by VIP, where the making of such a holding would have no determinative significance. While the court below drew for the most part from forum state law, as did all of the parties in their arguments below, it also drew, as did the parties, from relevant federal decisions. Its decision did not rest upon any principles as to which there is any controversy, but upon the specific facts.

VIP never asserted prior to its petition for rehearing that there exists any federal rule applicable here. It did not show then, and it does not show in its petition here, that a specific decision holding that federal law governs carries with it any different principle which would produce a different result on the facts presented.

This Court has held that it will not displace state law absent overriding "federal interests" or a need for a rule "uniform in character throughout the Nation." (*United States* v. *Yazell*, 382 U.S. 341, 352, 354.) On the specific fact pattern here, there is no overriding federal interest to displace any state law, since any such displacement would not produce any different result. Certainly, VIP does not show the absence of uniformity concerning any principles applicable here.

In short, there was no need here to make a specific holding of whether federal or state law governs, and the issue sought to be raised by VIP has no significance in the context presented. The court below properly recognized the need for scrutiny of a release which would bar an antitrust claim and at the same time recognized, as did *Zenith, Novak, Suckow* and other cases that, as VIP itself asserts, "amicable settlement and release of claims, including federal antitrust claims, is to be encouraged. . . ." (Pet. 10.)

4. In whatever way VIP attempts in its petition to disguise it, VIP's only quarrel is with the result adverse to it reached by the court below in applying familiar and well established principles to the specific facts presented. Because those principles have been enunciated for so long and so many times before, the decision below is not precedental and has no impact beyond the parties to this action.

The court below convincingly applied well established principles to reach the just and proper result. There is no basis for any further consideration by this Court of that decision.

CONCLUSION

It is respectfully submitted that the petition for writ of certiorari should be denied.

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